



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
DALLAS REGION

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May 12, 2015

Melonee Wise Green
106 Ridgecrest Drive
Ridgeland, Mississippi 39157

Re: Freedom of Information Act Request
2015-000048

Dear Ms. Wise Green:

This is in reply to your email, in which you requested certain information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which was received in this office on April 14, 2015. In your letter, you requested unfair labor practice charges that were "filed against Selena Wright-Brown (Nursing), during her tenure at the Veterans Affairs hospital in Fayetteville, Arkansas." Please note that, pursuant to Sections 7116(a) and (b) of the Statute, unfair labor practice charges may be filed against Federal agencies and labor organizations, not individuals. For this reason, there were no charges filed "against Selena Wright-Brown." However, to the extent that a charge was filed in this office which named Selena Wright-Brown, I have considered that matter as encompassed in your request.

After careful consideration of your request, it is my determination that your request will be granted in part and denied in part. I have enclosed copies of the public documents in Case No. DA-CA-12-0385, an index of which is attached. It is my determination that the additional information in the case file is exempt from disclosure under the Freedom of Information Act.

The chronology log and intra-office memoranda found in the above-referenced case file are denied as this information is protected from disclosure by the attorney work-product privilege found under Exemption 5. 5 U.S.C. § 552(b)(5). The attorney-work product privilege attaches once there is "some articulable claim likely to lead to litigation," e.g., the filing of a ULP charge. *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 865 (D.C. Cir. 1980). The attorney-work product privilege protects documents and other memoranda prepared by an attorney in anticipation of litigation. *Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947).

The inter-office routing and assignment forms found in the above-referenced case file are denied as this information is protected from disclosure by the deliberative process privilege found under Exemption 5. 5 U.S.C. § 552(b)(5). The deliberative process privilege applies to documents that are (1) predecisional, i.e., before the adoption of agency policy, *Mapother v. Department of*

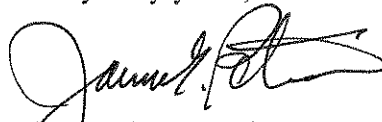
Justice, 3 F.3d 1533, 1537 (D.C. Cir. 1993) and (2) deliberative, i.e., part of a process of making recommendations on legal or policy matters. *Jordan v. Department of Justice*, 591 F.2d 753, 774 (D.C. Cir. 1978). This exemption serves the primary policy interest of encouraging frank and open discussions between subordinates and superiors on matters of policy, as well as to protect against a premature disclosure of proposed policy before it is finally adopted. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975). This exemption has been held to protect routine inter- and intra-agency consultations by and among agency personnel in the course of an investigation. *E.g. Perdue Farms*, 1997 U.S. Dist. LEXIS 14579 at **30-36 (NLRB investigation).

The non-public confidential documents found in the above-referenced case file is denied as this information is protected from disclosure by Exception 7(C). Exemption 7(C) permits an agency to withhold information compiled for law enforcement purposes where disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." Application of this exemption involves determining whether the intrusion into private matters is "unwarranted" after balancing the need for protection of private information against the benefit to be obtained by disclosure of information concerning the workings of the Agency. *Detroit Free Press, Inc. v. Dept. of Justice*, 73 F.3d 93, 96 (6th Cir. 1996), reh'g denied Apr. 15, 1996; *United States Department of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (standard of public interest to consider is one specifically limited to the FOIA's "core purpose" of "shed[ding] light on an agency's performance of its statutory duties"). Exemption 7(C) "applies to any disclosure that 'could reasonably be expected to constitute' an invasion of privacy that is 'unwarranted.'" The passage of time does not diminish an individual's privacy interest in not disclosing a record. *McDonnell v. United States*, 4 F.3d 1227, 1256 (3d Cir. 1993) (*McDonnell*).

With respect to that part of your FOIA request that I have granted, there are no charges associated with granting the request. 5 C.F.R. §2411.10.

I am responsible for the above determination. In accordance with Section 2411.7 of the FLRA Regulations, 5 C.F.R. §2411.10, you may obtain review of this determination by filing a written appeal with the General Counsel of the FLRA within 30 days after you receive notification of the denial of your FOIA request. Any such appeal should be filed with the General Counsel of the FLRA, 1400 K Street NW, Second Floor, Washington, D.C. 20424-0001.

Very truly yours,



James E. Petrucci
Regional Director

cc: Office of the General Counsel, Federal Labor Relations Authority, 1400 K Street NW,
Second Floor, Washington DC 20424-0001